

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 49-822-18-1-5-00909-19
Petitioner: Matthew Schiffler
Respondent: Marion County Assessor
Parcel: 49-06-16-101-002.000-822
Assessment Year: 2018

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Matthew Schiffler contested the property tax caps applied to two detached structures on his property located at 2101 West 44th Street in Indianapolis for the 2018 assessment year.
2. Because the PTABOA failed to act on his petition in the required time frame, Schiffler directly appealed to the Board, electing to proceed under the Board’s small claims procedures. On November 21, 2019, Ms. Jennifer Thuma, the Board’s designated administrative law judge (“ALJ”), held a hearing on the petition. Neither she nor the Board inspected the property.
3. Mr. Schiffler appeared pro se. Gabe Deaton, Director of Assessment and Chief Financial Officer, represented the Marion County Assessor. They were both sworn as witnesses.

Record

4. The official record contains the following:

Petitioner Exhibit 1:	Images of subject property
Petitioner Exhibit 2:	Property record card for subject property
Petitioner Exhibit 3:	Escrow record
Petitioner Exhibit 4:	Confirmation of filing of appeal
Petitioner Exhibit 5:	Printout from Marion County Assessor’s website
Petitioner Exhibit 6:	<i>Robert A. and Louann Palmer v. Marion County Assessor</i> (IBTR April 8, 2019)
Petitioner Exhibit 7:	Correspondence from Assessor’s Office
Petitioner Exhibit 8:	Form 130
Petitioner Exhibit 9:	Form 114
Petitioner Exhibit 10:	Transcript of phone call

Petitioner Exhibit 11: Certified Mail Receipts
 Petitioner Exhibit 12: Excerpts from Indiana Constitution
 Petitioner Exhibit 13: *U.S. v. Dunn*, 480 U.S. 294 (1987)
 Petitioner Exhibit 14: *U.S. v. Alexander*, 888 F.3d 628 (2d Cir. 2018)
 Petitioner Exhibit 15: Satellite view of buildings on the property
 Petitioner Exhibit 16: Street view of property
 Petitioner Exhibit 17: Satellite view of property
 Petitioner Exhibit 18: 2018 photo of carriage house
 Petitioner Exhibit 19: DLGF Fact Sheet for Circuit Breaker Caps
 Petitioner Exhibit 20: Property record card for 6215 E. Hanna Ave.
 Petitioner Exhibit 21: Property record card for 5019 N. Meridian St.
 Petitioner Exhibit 22: Property record card for 6201 W. 42nd St.
 Petitioner Exhibit 23: Property record card for 25 Williams Creek Blvd.

Respondent Exhibit 1: DLGF Fact Sheet for Circuit Breaker Caps
 Respondent Exhibit 2: *Gregory & Kristina Williams v. Boone County Assessor* (IBTR October 9, 2015)
 Respondent Exhibit 3: Sales Disclosure Form
 Respondent Exhibit 4: Property Record Card for 6215 Hanna Ave.
 Respondent Exhibit 5: Property Record Card for 5019 N. Meridian St.

5. The official record for this matter also includes the following: (1) all pleadings, briefs, proposed findings, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or the Board’s ALJ; (3) an audio recording of the hearing.

BURDEN OF PROOF

6. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year’s assessment, or where it is above the level determined in a taxpayer’s successful appeal of the prior year’s assessment. Ind. Code § 6-1.1-15-17.2(b) and (d).
7. Both parties agreed Schiffler had the burden of proof. We agree and find the burden rests with him.

SUMMARY OF CONTENTIONS

8. Schiffler presented the following case:
 - a. The subject property consists of a home, a carriage house, and a detached garage. Schiffler bought the property in 2019. He testified that he was contractually obligated to pay the 2018 taxes and thus had standing to contest them. For the 2018 assessment year, the carriage house received a 2% property tax cap and the detached garage received a 3% cap. He argued that the Assessor should have applied the 1% property

tax cap to the carriage house and the detached garage for the 2018 assessment year because they were part of the curtilage of the main residence. *Schiffler testimony*.

b. In support of this, he cited to the Indiana Constitution. It provides that “tangible property, including curtilage, used as a principle place of residence” by the owner may not be taxed at more than 1% of its assessed value. Ind. Const. Art. 10 § 1 (c)(4) and (f)(1). Because he could not find a definition of curtilage in the Indiana Code, he looked to the United States Supreme Court standard for curtilage from cases concerning the 4th Amendment of the United States Constitution. He argued that the carriage house and detached garage met the four part test set out in *U.S. v. Dunn*, 480 U.S. 294 (1987) because they were:

- protected from public view.
- in close proximity to the main house,
- surrounded by an enclosure, and
- used as an extension of the home.

Schiffler testimony; Pet’r Exs. 12, 13, 14, 15, 16,

c. Schiffler acknowledged that the circuit breaker fact sheet published by the Indiana Department of Local Government Finance (“DLGF”) states that detached structures should not receive a 1% cap. But he argued that this was a violation of the Indiana Constitution because “curtilage” can include detached structures. *Schiffler testimony; Ex. 19.*

d. Finally, Schiffler presented property record cards for several other properties in Marion County. He argued that these properties had received a 1% cap on their detached garages. He found this to be “arbitrary and unfair.” *Schiffler testimony; Pet’r Exs. 20, 21, 22, 23.*

9. The Assessor presented the following case:

a. The Assessor argued the subject property was taxed as the legislature intended. Based on the DLGF fact sheet, Deaton testified that any yard structure attached to the dwelling becomes part of the main residence and thus receives the homestead deduction. Because the subject property’s detached garage and carriage house are not attached to the main residence, Deaton testified they were not eligible for the 1% tax cap. The Assessor also argued that the federal case law related to curtilage was not applicable to Indiana property taxes. *Deaton testimony; Resp’t Ex. 1.*

b. Additionally, the Assessor argued that the tax cap depends on the use of the property. Although Schiffler testified about his use of the property, the Assessor found that testimony to be irrelevant because Schiffler did not live at the subject property during the assessment year. *Deaton testimony.*

- c. Finally, Deaton testified about two of the comparables Schiffler presented. He noted that those comparables received a 1% cap for the detached garages because they were the only garages on those properties, while Schiffler's detached garage was in addition to an attached garage. *Deaton testimony; Resp't Ex. 4, Pet'r Ex. 20*

ANALYSIS

- 10. Schiffler did not make a prima facie case that the tax caps were incorrectly applied to the carriage house and detached garage. We reached this decision for the following reasons:
 - a. Property owners in Indiana may qualify for the standard homestead deduction, which consists of the owner's principal place of residence consisting of a dwelling and the real estate not exceeding one acre that immediately surrounds that dwelling. Ind. Code § 6-1.1-12-37(a)(1)(A). Property owners also then receive a credit under Ind. Code § 6-1.1-20.6-7(a) which is often referred to as a "tax cap" against taxes exceeding a specified percentage of the homestead's gross assessment. That cap varies based upon the type of property at issue. Article 10 § 1 of the Indiana Constitution limits a taxpayer's property tax liability to between 1% and 3% of gross assessed value with the different levels tied to the type of property at issue. For property defined as a "homestead" under the tax cap statute, taxes are capped at 1% of gross assessed value. Ind. Code § 6-1.1-20.6-7.5(a)(1). The caps are higher for other types of property. Ind. Code § 6-1.1-20.6-7.5 (a) (2)-(6).
 - b. For purposes of the tax cap statute, a "homestead" "refers to a homestead that has been granted a standard deduction under IC 6-1.1-12-37." In essence, Schiffler claims that he was improperly denied the homestead deduction for the carriage house and detached garage. To resolve this, we turn to the standard-deduction statute (Ind. Code § 6-1.1-12-37). It provides, in relevant part:
 - (a) The following definitions apply throughout this section:
 - (1) "Dwelling" means any of the following:
 - (A) Residential real property improvements that an individual uses as the individual's residence, including a house or garage.
 - ...
 - (2) "Homestead" means an individual's principal place of residence:
 - (A) that is located in Indiana;
 - (B) that: (i) the individual owns; ...and
 - (C) that consists of a dwelling and the real estate, not exceeding one (1) acre, that immediately surrounds the dwelling.
 - ...
 - (b) Each year a homestead is eligible for a standard deduction from the assessed value of the homestead for an assessment date....
 - ...
 - (m) For assessment dates after 2009, the term "homestead" includes:

- (1) a deck or patio;
- (2) a gazebo; or
- (3) another residential yard structure, as defined in rules adopted by the department of local government finance (other than a swimming pool); that is assessed as real property and attached to the dwelling.

Ind. Code § 6-1.1-12-37.

- c. A homestead deduction can only be granted for property that is an individual's principal place of residence. This ties the homestead deduction to the use of the property during the assessment year. As the Assessor points out, Schiffler did not own or live at the subject property during the year at issue, 2018. While Schiffler speculated that the prior owner would have used the subject property in a manner similar to his own use, the only evidence he offered in support of this was a photo of the furnished carriage house from the previous owner. This alone tells us little about how the buildings were actually used in 2018. Without affirmative evidence showing that the carriage house and detached garage were used as a principal place of residence by the owner, we cannot conclude that they should have received a homestead deduction regardless of any other factors.
- e. We also note that Schiffler essentially argues that the tax cap statute, as well as the related DLGF guidelines, impermissibly narrow the Indiana Constitution's limit on taxes for an individual's principal place of residence and curtilage. Schiffler may be correct that the carriage house and detached garage could be considered "curtilage" for the purposes of search and seizure cases under federal law. But that alone does not entitle him to relief because: (1) those cases are not binding authority for the purposes of Indiana tax law, and (2) the tax cap statute specifies that the 1% cap is limited to property that has been granted a homestead deduction.
- e. The Board is a creation of the Indiana Legislature, and it only has those powers conferred by statute. *Whetzel v. Dep't of Local Gov't Finance*, 761 N.E.2d 904 (Ind. Tax Ct. 2002). Administrative agencies do not have the authority to declare a statute unconstitutional. *See Bielski v. Zorn*, 627 N.E.2d 880, 887-88 (Ind. Tax Ct. 1994) (stating that allegations a statute is unconstitutional are matters solely for judicial determination). Thus, we are bound to follow the law as it is written and find that Schiffler has failed to meet his burden to show the carriage house and detached garage should receive a 1% tax cap.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board finds for the Assessor and orders no change to the 2018 assessment.

ISSUED: February 13, 2020

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.